

REMARKS TO DETAILED ACTION

This is a response to the Office Action referenced by the Examiner as mailed on January 14, 2005, for the above-captioned application. The following remarks are organized by the paragraph headings and paragraph numbers used in the "Detailed Action" section of the Examiner's Paper, beginning on page 2 therein:

Status of Claims

Claims 1 through 14 stand without further amendment, as presented and amended in the Applicants' office action response received by the Examiner on August 9, 2004.

Claim Rejections - 35 U.S.C. §102

The Examiner introduces 35 U.S.C. §102(e) and then rejects claim 8, as being anticipated by U.S. Patent No. 6,167,382 to Sparks et al. (Sparks). However, Sparks fails to disclose the access of a photographer to the interaction between the user/client and the photographs produced as a result of an assignment. There is no plausible analogy between any element in the process taught by Sparks, to the role of the photographer as required in the Applicants' claims. A resident "image assembler software" package falls well short of a searched for and selected photographer. The Applicants' photographer is not a single, resident agent, but a variable, a selectable entity existing outside any sort of database. Furthermore, an assembler software package is not able to create a new

photograph based upon a user specification. Instead, as noted by the Examiner, the assembler package of Sparks only searches a database for a matching "image of a product," already on file.

The database of Sparks does not include any analogous selection or listing of photographers, who then shoot photographs to meet the needs of the user. An image database is a collection of images. By contrast, the Applicants' photographer database is a collection of photographers' specifications, with the ability to act as agents to acquire images outside the photographer database, independently of some sort of database of previously collected images. Selecting an photograph/image is not selecting a photographer/agent. The Applicants' claim 8 includes a photographer database not found in Sparks, and furthermore Sparks fails to teach such a listing of agents.

Without a photographer, responding to a photgraphic assignment for an original photograph, Sparks fails as an anticipatory reference in that claim 8 includes elements not found in the cited reference. Therefore, the Applicants' claim 8 is allowable over Sparks. Furthermore, no reference somehow combinable with Sparks teaches the claimed automated and orchestrated interaction between a user and a photographer/agent, to produce an original work, rather than an image from an existing catalog or database.

Specifically, the Applicants disagree with the Examiner's assertion that Sparks' "image of a product" somehow equates with the "photographer" of the Applicants' claims. A photographer is an alive, interactive and active agent, not an item or an image of an item. The photograph product produced by the Applicants' photographer may be an exact, realistic image, or a broad or abstract image, such as a blurred expression of specific or non-specific elements. This is not the assembly-line selection of one in a narrow, pre-set array of fast-food images, as taught by Sparks.

Claim Rejections - 35 U.S.C. §103

The Examiner introduces 35 U.S.C. §103(a) and then rejects claims 1 through 7 and 9 through 14, as being unpatentable over U.S. Patent No. 6,049,877 to White (White), in View of U.S. Patent No. 6,167,382 to Sparks et al. (Sparks).

Regarding claim 1, the Applicants observe that Sparks only deals with the cataloging, searching, manipulation and sales of existing, stock images. Therefore, the Applicants respectfully disagree with the Examiner's assertion that a photographer is selected, who then acquires a photographic image based upon the user's additional criteria or specifications. A vital step is missing from Sparks. No "photographer selection" function is present in the cited references, only the search of an online database of existing images, followed by the purchase of these images in template products, the image strictly modified within the bounds of the template imposed by the host, rather than by a photographer at the assignment direction of the client/user, as the Applicants propose.

No reference cited teaches a selection of a photographer by a user, followed by a request made to that selected photographer, for a photograph that fits the user's specifications. However, the Examiner jumps to the erroneous conclusion that the on-line catalog template selection process of Sparks, added to the internet client authentication technology of White, somehow equates to the Applicants' claims, skipping the required step of photographer *selection* and *interaction*. The use of a packaged "image assembling" program to search for and modify a stock image, is not a selection of an agent from listing of agents, that selected agent able to generate a desired image.

The Examiner is also erroneous in asserting there is an "assembly of pre-created images and templates from a library," in the Applicants' claims. There are no user modifiable "templates" in the Applicants' claims, nor is there a "store" of product images. The search for an image by "keyword", "category" or "icon" is not a search for a photographer, who then generates a

photograph, based upon submitted criteria. The Examiner erroneously analogizes a search for and selection of an image, and a subsequent modification of that image by an automated software package; to the search for and selection of a photographer, and a subsequent submittal of a photograph to a user, the photograph taken by that photographer, and a modification of that photograph through additional interactions between the photographer and the user. The selection of a photographer/agent is missing from Sparks. Sparks starts with the search for an image, instead of the Applicants' search for agents, one of which selected by the user, as best able to acquire potential images to suit the image need of the user.

As to claims 2 and 9, the Examiner again asserts that Sparks discloses interaction between a user and a photographer. Instead, the Applicants again observe that Sparks only discloses a "yes-or-no" acceptance by the user before a purchase of items. The pre-purchase "revision" that the Examiner refers to is a standard "shopping-cart" type of approval, as typically employed in nearly every internet shopping site. Clicking items ordered before "check-out" for purchase is *not* an interactive exchange involving direct "review and comment" from the user to the photographer, as proposed in claim 2 and 9 by the Applicants. Sparks fails to teach a dialog of modification, only a canned, pre-set accept/reject option to the content of an item for purchase, within a standard virtual shopping-cart.

The Examiner apparently reads the Applicants' claims as the simple selecting images from a catalog. The required step missing from the prior art is the selection of a photographer and supplying that photographer a set of specifications for a photograph, who then supplies the user with a photograph to meet the user's submitted specifications.

Additionally, claims 2 and 9 are considered patentable because they depends from claim 1 and 8, respectively, which are considered patentable as discussed above.

As to claims 3 and 10, these claims are considered patentable because they depend from claim 1 and 8, respectively, which are considered patentable as discussed above. The use of user control codes is known, but not in the access of a program by a user that invites the generation of a photograph from a selected photographer at the request and direction of a user, and maintains the interaction in an electronically secure exchange.

As to claims 4 and 11, just as with claims 3 and 10, above, these claim are considered patentable because they depend from claims 1 and 8, respectively, which are considered patentable as discussed above. Additionally for claims 4 and 10, Sparks fails to disclose the access of a photographer to the interaction between the user/client and the photographs produced as a result of an assignment. There is no possible analogy within the process taught by Sparks, to the role of the photographer as required in the Applicants' claims. Again, there is no agent or photographer searched for and selected in Sparks, only images. Additionally, the Examiner is erroneous in asserting the there is an "assembly of pre-created images and templates from a library," in the Applicants' claims. There are no user modifiable "templates" in the Applicants' claims. A combination of Sparks and White fails to equate to the claims of the Applicants.

As to claim 5 and 12, these claims are also considered patentable because they depend from claims 1 and 8, respectively, which are considered patentable as discussed above. Granted, a progress history of an electronic interaction is well known. However, such a history in association

with a control program that interactively completes a photographic assignment at the direction of a user is not known. Again, the Examiner erroneously asserts that Sparks somehow teaches the role of the photographer interacting with the assignment specifications of the user, as required in the Applicants' claims.

As to claims 6 and 13, these claims are also considered patentable because they depend from claims 1 and 8, respectively, which are considered patentable as discussed above. Specifically, e-mail updates and communications are well-known. However, the generation of e-mails in the course of an interaction, where the user is interactively completing a photographic assignment at the direction of a user is not known, and is novel and patentable over the prior art of record.

As to claims 7 and 14, the Applicants' strongly assert that Sparks fails to teach the display of a progress work or illustration to the user. Instead, Sparks only discloses the display of the image selected by the user, for purchase. One skilled in the art could not take the disclosure of Sparks to teach the display of a photograph to a user, the photograph submitted in proposal by a third party photographer to the user in response to a specification submitted to the photographer by the user. Claims 7 and 14 are also considered patentable because they depend from claims 1 and 8, respectively, which are considered patentable as discussed above.

Conclusion

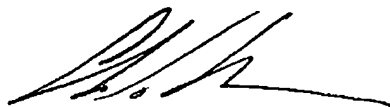
In view of the above remarks regarding the cited art, it is respectfully submitted that the Applicants' invention is not rendered unpatentable. The Applicants assert that base claims 1 and 8, and the claims that depend therefrom, are not merely describing successive searches of database for "the image of a product," as asserted by the Examiner. A photographer is not an image of a product.

There is no database search for an actual image in the Applicants' claims. Only the review of images provided to the user in response to a specification, submitted to a selected photographer. Sparks misses the step of searching for and selecting a photographer/agent, who in turn generates a photograph based upon the user's specifications. The photograph is not the photographer, just as the painting is not the artist. However, the Examiner erroneously asserts that Sparks' "image Database," which digitally contains the "image of the product," directly equates to a photographer somehow containing a photograph. The photograph does not exist within the photographer. Sparks only teaches the search of the Database for a preexisting image, not the selection of the photographer who then uses their talents to generate an image.

The Applicants believe that all of the Examiner's concerns have been fully addressed and respectfully requests reconsideration of claims 1 through 14, and a withdrawal of all rejections. If, in the opinion of the Examiner, a telephone conference would expedite the prosecution of the application, the Examiner is invited to call Applicants' undersigned representative at (509) 453-1319.

Respectfully submitted,

Stratton Ballew PLLC



Chris E. Svendsen
Reg. No 40,193
213 South 12th Ave.
Yakima, WA 98902
Phone: (509) 453-1319
Fax: (509) 453-4704

CERTIFICATE OF TRANSMITTAL BY FACSIMILE

I hereby certify that this correspondence, and all referenced documents, are being transmitted via facsimile to the Commissioner of Patents and Trademarks, Washington D.C. at facsimile number (703) 872-9306 on April 14, 2005.



CHRIS E. SVENDSEN